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SENATE BILL 335

## Crime bill OK'd, awaits signing

### THE LEGISLATURE PASSED

a crime bill that, if signed by the governor, would make numerous changes to the sentencing law.

Among the provisions of SB 335:

- Increases the maximum penalty for a Class C felony to eight years.
- Reduces the maximum penalty for a Class D felony to four years.
- Redefines "persistent offender" to require that the offender, besides having two or more felony convictions, have one unrelated prison commitment.
- Redefines "dangerous offender" to require that the offender, in



**Other law enforcement-related bills:** Pages 3-4

addition to the nature of the offense, have a previous prison commitment for a Class A or B felony or a dangerous felony.

- Repeals language that currently allows a reduced sentence for an offender charged, but not yet sentenced, if a new law would reduce that sentence.
- Allows the court to consider the

**SEE SB 335, Page 2**



Attorney General Jay Nixon was among state officials speaking during National Crime Victims Rights Week. A ceremony was held at the State Capitol, where victims and crime victim advocates also spoke for more victim rights in Missouri.

## U.S. Supreme Court broadens car searches

**THE U.S. SUPREME COURT** ruled that passengers' personal belongings can be searched in a car during searches incident to arrest.

The April 5 ruling is the latest of several in which the court has attempted to clarify and simplify the circumstances in which officers can make warrantless searches.

In *Wyoming v. Houghton*, the court

ruled that a search incident to arrest allows a search of all items found in a vehicle, even those officers know don't belong to the suspect.

A Wyoming trooper saw a syringe in the pocket of the driver and arrested him for drug possession. The officer then asked two female passengers to leave the car while he searched. The defendant left her purse where meth

and drug paraphernalia were found.

She claimed the purse search was illegal because the trooper should have known the purse did not belong to the male driver and therefore should not have been subject to a search.

The court held that **any** container or package in the vehicle may be searched

**SEE SEARCH, Page 2**

**Top court:  
No media  
ride-alongs**

**THE U.S. SUPREME COURT** ruled that police violate people's privacy rights when they allow the media into homes during arrests or searches.

Police can be sued for violating the Fourth Amendment protection against unreasonable searches and seizures, the court unanimously ruled in May.

## SB 335 PROVISIONS

CONTINUED from Page 1

recommendations of the Sentencing Advisory Commission when determining a sentence.

- Requires the court, when deviating from the Sentencing Commission's recommendation involving any drug violation under Chapter 195, RSMo, to state in writing the reasons for deviating.
- Allows the court, in suspended imposition or suspended execution of sentence cases, to consider alternative sentences such as restitution, treatment or community service.
- Requires law enforcement agencies involved in federal forfeitures to audit seizures and proceeds using standards set by the state auditor, and to report the audit to the governing body and the Department of Public Safety. An agency that fails to comply will not be eligible for funds distributed by the department. An agency that has failed to get audits for past years will need to get audits.
- Reduces the dollar threshold for felony stealing, a Class C felony, from \$750 to \$500. (Last year, legislators increased the threshold for stealing from \$150 to \$750.) Increases the dollar threshold for felony stealing of material with the intent to manufacture meth from \$150 to \$500. Any attempt to steal anhydrous ammonia, an ingredient of meth, will be a Class D felony. Any person who has twice pleaded or been found guilty of misdemeanor stealing or receiving stolen property and who then is found guilty of a subsequent offense is guilty of a Class D felony.
- Increases the penalty for carrying a



## LEGISLATIVE UPDATE

firearm into a school or onto a school bus to a Class C felony (now a Class B misdemeanor). School-sanctioned, firearm-related events are exempted.

- Clarifies that peace officers may carry concealed weapons outside their jurisdictions and while off duty. Allows certain former peace officers or reserve officers, former judges, and former prosecuting attorneys to carry concealed firearms. If a former judge or prosecutor does not have a valid permit, they first must complete eight hours of firearms training.
- Creates the crime of "aggravated offender" under the DWI laws. An aggravated offender must have been convicted of three or more DWIs, one of which is a felony, within 15 years of the current offense. A person convicted of DWI who is an aggravated offender is guilty of a Class C felony.
- Creates the crime of leaving the scene of an accidental shooting when a person kills or injures someone and fails to report it to a law enforcement officer or nearest police station. Conservation agents may enforce this in hunting-related shootings. This crime is a Class A misdemeanor and a Class D felony for a subsequent offense.
- Updates the sex offender registration law according to federal mandates and requires the Department of Public Safety to maintain the registry on the Internet.
- Criminalizes certain telemarketing activities.
- Eliminates the crimes of pharmacy robbery in the first and second degree.

## SEARCHES

CONTINUED from Page 1

in a search incident to a custodial arrest. "The sensible rule ... is that such a package may be searched, whether or not its owner is present as a passenger or otherwise, because it may contain the contraband that the officer has reason to believe is in the car."

Consent of the passenger or owner is not required because the search is not based on consent; the search is justified because it is incident to a lawful arrest.

## What makes a search legal

Searches incident to arrest are lawful only if there has been a lawful custodial arrest based on probable cause. The fact that an officer issued a citation or "could have" arrested is not sufficient to justify this search.

A search incident to arrest only allows police to search the car's **interior, not the trunk**. For almost 30 years, officers have had the right to make warrantless searches of any person custodially arrested or any item found on the person.

If the arrested suspect was driving **or riding** in a vehicle, the officer may make a search incident to arrest of the entire car interior, including any containers, locked or unlocked.



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## LEGISLATIVE UPDATE

### JUVENILE SEX OFFENDERS

HB 348 provides that a juvenile who has been adjudicated for an offense that, if committed by an adult, would be a felony sex offense pursuant to Chapter 566, RSMo, must register as a juvenile sex offender. HB 348 also applies to juveniles adjudicated in other states for similar offenses.

A juvenile adjudicated for a sex offense must register with the local juvenile officer and include name, address, Social Security number, phone, school, place of employment and offense that requires registration.

Registration forms maintained by the juvenile officer is confidential but the officer may share this information with the victim, witnesses, law enforcement and school officials, prosecuting attorneys, parents or guardians, or any person or agency that provides treatment to the juvenile.

Juveniles will not be required to register at age 21 unless they are subject to the adult registration requirements of Section 589.400.

Several measures that would affect the law enforcement community have been approved by the legislature. If signed by the governor, these bills will become effective Aug. 28 unless a bill contains an emergency clause.

### EMPLOYMENT OF OFFICERS

HB 568 provides that an agency that complies with federal laws on age discrimination is not in violation of the Missouri Human Rights Law.

### STATE FIRE INVESTIGATORS

HB 792 extends the arrest powers of the state fire marshal and his investigators if those investigators have been certified pursuant to Chapter 590, RSMo, to any offense incident to an investigation of a suspicious fire or explosion. Currently, these investigators only have arrest powers for fire-related offenses.

### GRADUATED DRIVERS LICENSES

SB 19 allows 15-year-olds to start driving with parental instruction; 16- to 17-year-olds would have restricted driving hours. This takes effect Jan. 1, 2001. The bill also creates a motorist insurance identification data base in the Department of Revenue to verify that drivers are insured. This takes effect July 1, 2001.

### HIV INFORMATION

HB 271 allows a doctor, nurse or physician's assistant who treats a police officer exposed to another person's blood or bodily fluids to request that the Department of Health provide information about the HIV status of the person. The department may disclose that information if it is on file. The officer cannot further disclose the information. Any person who releases HIV information in violation of this act commits a Class A misdemeanor.

### FUNERAL PROCESSIONS

SB 270 gives a funeral procession the right-of-way at traffic intersections, even when the light is red, if the lead vehicle of the procession legally entered the intersection.

However, a funeral procession must yield to an emergency vehicle or if directed by a police officer. Motorists who drive between vehicles in a procession or try to pass or join a procession are guilty of an infraction and may be fined up to \$100. Any local government may adopt an ordinance substantially similar to this act.

# House bill broadens sexual predator law

HB 852 expands the sexual predator law passed in 1998. HB 852 allows the attorney general, when a referral is made from a law enforcement officer, to petition the court that a person meets the definition of a sexual predator and should be detained. An officer may only refer a person who has been convicted of a sexually violent offense and has:

■ Committed a recent overt act as

defined in this bill; or

■ Has been in the custody of either the Department of Corrections or Mental Health within the last 10 years and may meet the criteria of a sexual predator. A referral must be made in writing and include the person's previous conviction record, a description of the recent overt act, if applicable, and any other relevant evidence.

If the court finds that the person may

be a sexual predator, the court will order the person detained for evaluation by the Department of Mental Health.

If the department determines the person meets the definition of a sexual predator, it must notify the attorney general and the prosecutor's review committee. If the committee determines the person is a predator, the attorney general can file a petition for probable cause.

**CHILD-CARE PROVIDERS**

HBs 490 and 308 require home-based child-care providers who apply for state or federal funds to complete a criminal background check and a check with the central registry for child abuse established in Section 210.145, RSMo. A check also must be conducted on anyone 18 or older who lives at the home.

Barring mitigating circumstances, applicants will not be eligible for funds if they or other adult residents have had a probable finding of child abuse or neglect, had their license suspended, revoked or were refused licensure, or had pleaded guilty or no contest to a variety of crimes.

This act also establishes the Family Care Safety Act and a Family Care Safety Registry and Access Line that will be available before Jan. 1, 2001. The registry must contain information about child- and elder-care workers and MULES.

Workers hired on or after Jan. 1, 2001, must register with the Health Department. Those who don't, commit a Class B misdemeanor. Registry information may be accessed only for "employment purposes." This provision ends on Jan. 1, 2004.

**LEGISLATIVE UPDATE****POLICE ANIMALS**

HB 248 provides that a person is guilty of killing or disabling a police animal when he knowingly kills or disables the animal so it cannot be used as a police animal. This crime is a class D felony.

A person is guilty of assaulting a police animal when he knowingly attempts to kill or disable the animal or knowingly causes or attempts to cause serious physical injury. This crime is a class C misdemeanor. HB 248 also defines the term "police animal."

**ANIMAL FIGHTING**

HB 79 clarifies activities that are legal, such as fishing and rodeos, and were not intended to be prohibited with the passage of Proposition A in November 1998.

**MEG UNITS**

SB 207 allows a representative of a hazardous materials response team or local fire response agency to be on the board of a multijurisdictional enforcement group. This change recognizes the dangers in meth cleanups and the need for expertise.

**GAMBLING**

HB 793 exempts from gambling laws amusement games that award no more than \$250 in noncash prizes.

**ETHNIC INTIMIDATION**

SB 328 provides stiffer sentences for crimes motivated by race, color, religion, national origin, sex, sexual orientation or disability.

**LIQUOR**

HB 267 allows all bars to sell liquor on Sundays and sets guidelines for law enforcement officers who use minors in stings.

**MULES**

HB 328 mandates that acquittals based on not guilty by reason of insanity be forwarded to the central repository.

**Senate bill establishes crime of identity theft**

SBs 328, 87, 100 & 55 creates the crime of identity theft when a person, knowingly and with intent to deceive or defraud, obtains, possesses, transfers or uses an ID not lawfully issued to that person.

The maximum penalty for identity theft or attempted theft is six months for a first offense, one year for a second offense, and one to five years for subsequent offenses. This provision also allows the court to order restitution. The bill also:

- Eliminates the crime of ethnic intimidation, now in sections 574.090 and 574.093, and replaces it with Section 557.035, which allows the crimes of property damage, unlawful use of weapons, second-degree tampering, first-degree trespass and rioting to be enhanced if a person is motivated to commit one of those crimes based on race, color, religion, national origin, sex, sexual orientation or disability. This section also defines the terms of "disability" and "sexual orientation."
- Creates the crime of second-degree involuntary manslaughter when a person acts with criminal negligence to cause a death. Is a Class D felony.
- Includes debit devices in the crime of fraudulent use of a credit device pursuant to Section 570.130.
- Creates the crime of leaving the scene of an accidental shooting (see description in SB 335, page 2).

## Drunken driver's murder conviction upheld on appeal

The state appeals court in Kansas City ruled that prosecutors can file murder charges against repeat drunken drivers who kill. The appeals court in St. Louis issued a similar ruling in 1998.

In the May 25 case, the AG's Office successfully argued against the appeal of a Jefferson City man who caused a wreck that killed a law student and injured the student's fiancee.

The Boone County prosecutor had convicted Richard Brown of felony second-degree murder and assault in 1997. Brown was sentenced to 30 years.

Anyone with three drunken driving convictions who kills face murder charges. In the past, these drivers usually faced involuntary manslaughter convictions. The increased penalties come from the expanded use of Missouri's felony murder statute.

The Audrain County prosecutor was the first to extend the felony murder charge to felony drunken driving in 1996. He convicted an Auxvasse man of three counts of second-degree murder for a crash that killed three. The AG's Office successfully defended the verdict.



**Attorney General Jay Nixon**, right, presents Tim Anderson, director of the Meth Prosecution Strike Force, with a certificate of appreciation from the Missouri National Guard Counterdrug Program. Col. James Wakeman said Anderson was "very knowledgeable and performed an outstanding job" when he spoke on "Fundamentals of Counterdrug Intelligence Analysis."

## Common-law leader guilty

A leader of the common-law courts movement in Missouri was sentenced to seven years in prison.

Clifford Keith Hobbs of Auxvasse had pleaded guilty to tampering with a judicial officer for filing a bogus lien against a Lincoln County judge.

Hobbs originally was convicted on the same charge by a Lincoln County court in December 1996, but a state appeals court reversed and remanded the decision. The AG's Office then refiled the charge.

## Former jailer arrested

A former Miller County jailer sought by authorities on a nationwide arrest warrant was arrested in Arizona.

Eric Taylor faces three charges of acceding to corruption stemming from a state investigation of the Miller County Sheriff's Department and jail. Taylor is one of seven facing a variety of charges by the AG's Office.

The other six defendants are scheduled to go to trial Aug. 3.

## NEWS CLIPS

### Less federal court access

The U.S. Supreme Court limited federal court access for state prison inmates challenging their prosecutions.

On June 7, the justices in a 6-3 ruling said state prisoners seeking a federal court's help generally cannot pursue claims not raised on direct appeal to their state's highest court.

### St. Louis tops crime stats

Newly released FBI crime stats for 1998 put St. Louis at the top of the

nation's major cities in overall crime rate. Kansas City ranked No. 7.

While the preliminary stats ranked St. Louis No. 1 in crime per capita, St. Louis police officials say crime fell in all categories except larceny.

St. Louis also was ranked as second in burglaries, third in larcenies, fifth in robberies, and eighth in murders.

### KC police told to pay \$2.2M

The Kansas City Police Department was ordered to pay \$2.2 million to a

wheelchair-bound man who sued over the way he was treated during an arrest. A federal district court jury awarded the money to a man paralyzed from the waist down, who claimed he was injured in a fall after officers improperly strapped him onto a bench in a police van.

### St. Louis sues gun makers

The city of St. Louis joined other cities suing the gun industry to recover tens of millions of dollars spent dealing with violence over the years.



June 1999

## FRONT LINE REPORT

# Federal appeals court affirms firing of officer

**IN A CLOSELY WATCHED** case, the entire 8th U.S. Circuit Court of Appeals ruled that a police officer's constitutional rights were not violated when a Missouri city fired him because his wife and daughter planned to bribe the police chief.

This ruling overturns an earlier decision by a 8th Circuit three-judge panel, which questioned police agencies' discretion to dismiss and ordered the officer's reinstatement.

Under Missouri law, most public employees are considered "at will" — they can be dismissed for no reason or even a bad reason unless there is an overriding contract or statute.

In *Singleton v. Cecil*, the three-judge panel had used a constitutional

provision known as "substantive due process" under the 14th Amendment to hold that an officer's dismissal was "unreasonable." The officer's wife and daughter were attempting to blackmail the police chief by offering a bribe. The court believed that regardless of the "at will" status, the Constitution prohibits employment decisions that are "arbitrary and capricious."

The court ignored the discord that would be caused in a small department when the chief is being targeted by the family of a subordinate. Instead, the court thought it was "unreasonable" to dismiss the officer for misconduct committed by his family, regardless of the impact it had on the effectiveness of the department.

The recent ruling, however, concluded that "the Supreme Court has suggested that a public employee's interest in continued employment with a governmental employer is not so 'fundamental' as to be protected by substantive due process."

This ruling does not change the "at will" law nor alter any rights to appeals that disciplined officers now have. This decision indicates that federal courts will be reluctant to use substantive due process as a basis for reviewing employment decisions made by law enforcement agencies. It also will limit the use of substantive due process claims as a way for plaintiffs to try to bring lawsuits in federal court against police agencies.